

46 Am. Jur. 2d Judges § 12

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Judges

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III. Term of Office, in General

§ 12. Holding over of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  7, 9

Forms

Forms relating to holding over, generally, see Am. Jur. Pleading and Practice Forms, Judges [\[Westlaw®\(r\) Search Query\]](#)

Constitutions or statutes frequently provide that judges will hold office until their successors are elected or appointed and qualified.¹ Even in the absence of a statutory provision, an incumbent judge may have the right and duty to hold over and exercise the duties and functions of the office until a successor is appointed; however, under such circumstances the judge is not a judge de jure, but is at most a judge de facto.² A judge de facto merely performs the functions of the office until a duly qualified appointee appears, and then is bound to yield the office to the appointee; a judge de facto's incumbency does not prevent a vacancy of the office or the filling of the vacancy.³

Where the constitution or statute fixes the term of a judge at a certain number of years, a statutory provision to the effect that public officers may hold over until a successor is chosen does not apply to judicial officers.⁴ Under such a statute, a judge does not hold over but ceases to hold office as of right at the conclusion of the specified number of years.⁵

Observation:

Under a statute providing that judges will serve for a specified term from the date of appointment and until a successor is appointed and qualified, the appointing authority cannot appoint a judge holding over from a previous term of appointment to the statutory term beginning at the termination of the prior term, but must appoint the judge for the statutory term from the date of the appointment.⁶

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Footnotes

- 1 [Gray v. Bryant](#), 125 So. 2d 846 (Fla. 1960).
- 2 [State v. Clark](#), 87 Conn. 537, 89 A. 172 (1913).
A judge whose term has ceased may sign orders nunc pro tunc for a judgment entered into before the expiration of that judge's term. [Lansing v. Lansing](#), 736 S.W.2d 554 (Mo. Ct. App. E.D. 1987).
A district judge who has been properly replaced by a successor has the authority to sign a written judgment after the judge has been replaced, provided that such judge heard the cause and entered the judgment in the docket sheet before the expiration of the term. [Martinez v. Martinez](#), 759 S.W.2d 522 (Tex. App. San Antonio 1988).
- 3 [Nollette v. Christianson](#), 115 Wash. 2d 594, 800 P.2d 359 (1990).
As to de facto judges, generally, see § 226.
- 4 [Etelson v. Jacaruso](#), 80 Misc. 2d 685, 364 N.Y.S.2d 103 (Sup 1975), judgment aff'd, 47 A.D.2d 715, 366 N.Y.S.2d 389 (2d Dep't 1975).
- 5 [State ex rel. Rundbaken v. Watrous](#), 135 Conn. 638, 68 A.2d 289 (1949).
- 6 [Levine v. Mayor of City of Passaic](#), 233 N.J. Super. 559, 559 A.2d 485 (Law Div. 1988).

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